

# **EXHIBIT H**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

IN RE: \* PROMESA TITLE III  
\*  
THE FINANCIAL OVERSIGHT AND \* CASE NO. 3:17-bk-03283 (LTS)  
MANAGEMENT BOARD FOR PUERTO RICO \*  
\*  
As representatives of \*  
\*  
THE COMMONWEALTH OF PUERTO RICO \*  
RICO; Et Al. \*  
\*  
Debtor \*  
\*\*\*\*\*  
IN RE: \* PROMESA TITLE III  
\*  
THE FINANCIAL OVERSIGHT AND \* CASE NO. 3:17-cv-01685 (LTS)  
MANAGEMENT BOARD FOR PUERTO RICO \*  
\*  
As representative of \* CASE NO. 3:17-bk-03566 (LTS)  
\*  
THE EMPLOYEES RETIREMENT SYSTEM \*  
OF THE GOVERNMENT OF THE COMMON- \*  
WEALTH OF PUERTO RICO \*  
\*  
Debtor \*  
\*\*\*\*\*

DEPOSITION OF MR. FRANCISCO JOSÉ PEÑA MONTAÑEZ

DATE : May 30, 2019  
TIME : 9:03 a.m.  
CLIENT : JONES DAY  
ADDRESS : Brickell World Plaza  
600 Brickell Avenue, Suite 3300  
Miami, Florida  
HELD AT : Delgado & Fernández  
Professional Offices Complex  
1001 San Roberto Street, Second Floor  
San Juan, Puerto Rico

1 Q And what do you understand that term to be?

2 A I am not sure of what AUC means.

3 Q Have you come to an understanding that ERS  
4 historically, before June 2017, was underfunded in terms  
5 of the amount of money coming in order to pay pensions  
6 going out.

7 A According to my reading of the documents, I  
8 understand that the system had a debt, and that it was  
9 underfunded.

10 Q And over the years, efforts were made within  
11 the Commonwealth of Puerto Rico to try to re-form the  
12 system, in order to...

13 INTERPRETER:

14 "Balance...?"

15 MR. PAPEZ:

16 --balance the... thank you!

17 (Laughter.)

18 MR. PAPEZ:

19 Do you want this seat?

20 INTERPRETER:

21 Not really.

22 MR. PAPEZ:

23 No, that's okay. That's fine.

24 MR. SUSHON:

25 Objection, beyond the scope.

1 MR. SUSHON:

2 ...I won't allow Mr. Peña to testify about that.

3 MR. PAPEZ:

4 I guess, then let me, I'm going to speak clear,  
5 then.

6 Q And if you need to Mr. Peña, just wait a  
7 minute, and let Mr. Sushon assert deliberative process  
8 before you answer, if he is going to assert it. Okay?

9 A Yes.

10 Q In February, in February of 2017, how was it  
11 contemplated that the switch to the pay-as-you-go model  
12 would address the cash-flow shortfall of the ERS System?

13 MR. SUSHON:

14 Please translate my objection. Francisco, in  
15 answering this question, you can testify about the  
16 anticipated effect of the pay-as-you-go forms that were  
17 actually adopted by the Commonwealth. To the extent  
18 that you would answer based on other potential reforms,  
19 you should not provide that information, because it is  
20 deliberative process privilege.

21 MR. PAPEZ:

22 Q Can you answer?

23 A Can you repeat the question for me?

24 (Laughter.)

25 Q Okay. In February of 2017, how was it

1 contemplated that the switch to the pay-as-you-go model  
2 would address the cash-flow shortfall?

3 A Basically, it was a mechanism to identify the  
4 resources that would guarantee the payment of the  
5 pensions.

6 Q Okay. And what resources are you referring to  
7 that would guarantee the payment of the pensions?

8 A I cannot answer that question, because there  
9 were several sources, and it was part of what was being  
10 evaluated.

11 Q So, would your answer then fall within Mr.  
12 Sushon's instruction not to reveal deliberations?

13 A That is correct.

14 Q In the second box there, on the top it says,  
15 "Maintain quality of life," and you go over to the  
16 strategy, there's two bullets, "Protect benefits for  
17 lowest pension income earners, and a progressive  
18 strategy to reduce retirement benefit costs." Do you  
19 see that?

20 A I can see that, yes.

21 Q Are those two bullets referring to a potential  
22 decrease in pension benefits that would be paid to at  
23 least some retirees?

24 MR. SUSHON:

25 I object on the grounds that that's beyond the

1       DEPONENT:

2               What trust funds are you referring to, in order to  
3       answer the question?

4       MR. PAPEZ:

5               Uhhh... Can you hand him Exhibit 10, please?

6               Q       Mr. Peña, this is a copy of Act 106. There's  
7       an English translation and a Spanish version in the  
8       back. You're welcome to refer to whichever one you'd  
9       like. I'm going to refer to the Spanish version--

10              Okay. Section 2; it's on Page 17 of the English  
11       version, all right, it says, "The accumulated Pensions  
12       Payment Account is hereby created under the auspices of  
13       the Treasury Department, which will be kept in a trust  
14       fund separate from the general assets and accounts of  
15       the Government, which will operate under a pay-as-you-go  
16       system for the payment of pensions accumulated by the  
17       Retirement Systems." And then it goes on.

18              So my first question is, has the Central Government  
19       created, under the auspices of the Treasury Department,  
20       a trust fund separate from the general assets and  
21       accounts of the Central Government?

22              A       The accounts that were opened are bank  
23       accounts, they were not trusts, and they are maintained  
24       separate from the other accounts of the Government of  
25       Puerto Rico.

1           Q     Okay. So, just so I understand, they're just  
2     normal bank accounts, they're not trust bonds, but  
3     they're still separate from General Funds or other TSA  
4     accounts.

5     MR. SUSHON:

6           Object to the form.

7     DEPONENT:

8           That is correct.

9     MR. PAPEZ:

10          Q     Do the Public Corporations in the  
11     Municipalities pay their Pay-Go fees into those separate  
12     bank accounts that we just discussed?

13          A     That is correct.

14          Q     And then, as I understand it, periodically the  
15     Treasury Department sweeps those, the funds from those  
16     separate accounts, in order to collect the Pay-Go fees  
17     that the Municipalities and Public Corporations paid.  
18     Is that correct?

19          A     That is correct.

20          Q     How often does that process happen? The  
21     sweeping process happen?

22          A     Currently, it is on a daily basis.

23          Q     So, as of midnight, on any given day, there  
24     could be zero funds in those separate accounts. Is that  
25     correct?

1 INTERPRETER:

2 "Rather than just pay the pensions directly?"

3 MR. SUSHON:

4 I object to that question on the grounds of the  
5 deliberative process privilege, and instruct you not to  
6 answer.

7 MR. PAPEZ:

8 Q All right. After Joint Resolution 188 went  
9 into effect, Public Corporations and Municipalities, and  
10 the Central Government were obligated to pay Pay-Go  
11 fees. Correct?

12 MR. SUSHON:

13 I object under the Best Evidence Rule.

14 DEPONENT:

15 I do not see that in the text, but I do see, at the  
16 end of the document, is that AAFAF would establish a  
17 mechanism to establish a system based on Pay-Go.

18 MR. PAPEZ:

19 Q Okay, put aside the text. I'm just asking you  
20 what happened. After Joint Resolution 188 went into  
21 effect, was a system set up such that municipalities  
22 started paying Pay-Go fees?

23 A That is correct.

24 Q And, similarly, Public Corporations started  
25 paying Pay-Go fees.



1 MR. SUSHON:

2 Object to the form.

3 DEPONENT:

4 Yes, that is correct.

5 MR. PAPEZ:

6 Q And, as we talked about before, the Central  
7 Government didn't actually make transfers, but made  
8 accounting entries to reflect Pay-Go fees. Correct?

9 A That is correct.

10 Q Okay. And all of those Pay-Go fees were used  
11 to fund pension payments to retirees, that existed  
12 before Joint Resolution 188 went into effect. Correct?

13 MR. SUSHON:

14 Object to the form.

15 DEPONENT:

16 Okay, all of the payments were to make payments for  
17 pensions, but I cannot specify if it was all of them,  
18 but most of them.

19 MR. PAPEZ:

20 Q Aside from where the funds were paid to, Pay-  
21 Go fees being paid to the accounts we talked about  
22 earlier, and employer contributions being paid to ERS,  
23 what is the difference between Pay-Go fees and employer  
24 contributions?

25 A Okay, the payroll payments are based on an

1 amount similar to the payment, the pension payments,  
2 whereas the contributions by the employer are based on a  
3 percentage of the annual payroll.

4 Q Is there any other difference that you can  
5 think of?

6 A At this time, that is the most significant  
7 one.

8 MR. PAPEZ:

9 I'm handing deponent...

10 COURT REPORTER:

11 This one is 25.

12 MR. PAPEZ:

13 Q I'm handing you Exhibit 25. There's an  
14 English and a Spanish version, and you're welcome to  
15 refer to whichever you please. It's an e-mail dated  
16 July 7, 2017 from Omar Rodríguez to several folks, and  
17 your C.C. is on it.

18 (Deponent reviews exhibit.)

19 A I can see that.

20 Q Okay. Who is Omar Rodríguez?

21 A He is the deputy secretary of Central  
22 Accounting at the Department of the Treasury.

23 Q Okay. Does he report to you?

24 A At the time of this notification, no. As the  
25 current under-secretary of the Treasury, yes.